

GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE LEASE AMENDMENT	LEASE AMENDMENT No. 1 TO LEASE NO. GS-02P-LNY24174
ADDRESS OF PREMISES: 250 Delaware Avenue Buffalo, NY 14202-2014	PDN Number: PS0035023

THIS AGREEMENT, made and entered into this date by and between **DNC 250, Inc.**

whose address is: **100 Corporate Parkway, Suite 500, Amherst, NY 14226**

hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease to: (1) to revise the square footage of the Government leased space; (2) memorialize the terms of the parking; (3) establish the fully serviced rent; (4) establish the Broker Commission and Commission Credit; (5) establish the renewal rights; (6) establish the total Tenant Improvements (TI) allowance; (7) establish the total Building Specific Amortized Capital (BSAC); (8) provide for a one time lump sum payment for TI Costs above the TI Allowance; (9) revise the percentage of occupancy; and (10) revise the operating cost base.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, as follows:

1. The Government hereby leases an additional 2,690 ANSI/BOMA Office Area Square Feet (ABOASF) / 3,082 Rentable Square Feet RSF from the Lessor. The Premises as defined in the Lease in Paragraphs 1.01 is modified and replaced as follows:

1.01 THE PREMISES (JUN 2012)

The Premises are described as follows:

A. Office and Related Space: A total of 53,314 RSF, yielding 46,534 ABOASF comprised of 50,232 RSF / 43,844 ABOA SF of office and related Space located on the 7th and 8th floors, and an additional 3,082 RSF / 2,690 ABOASF on the 1st floor of the Building, as depicted on the floor plan(s) attached hereto as Exhibit "A".

This Lease Amendment contains 13 pages.

All other terms and conditions of the Lease shall remain in force and effect.

IN WITNESS WHEREOF, the parties subscribed their names as of the below date.

FOR THE LESSOR:

Signature:

Name:

Title: President

Entity Name: DNC 250, Inc.

Date: June 8, 2016

FOR THE GOVERNMENT:

Signature:

Name:

Title: Mary Nowobilski

Lease Contracting Officer

GSA, Public Buildings Service

Date:

(b) (6)

[Redacted Signature]

Name: Mary Nowobilski

Title: Lease Contracting Officer

GSA, Public Buildings Service

Date: June 10, 2016

WITNESSED FOR THE LESSOR BY:

Signature:

Name:

Title:

Date: JUNE 8, 2016

(b) (4)

[Redacted Signature]

(b) (4)

In instances where the Lessor amortizes either the TI or BSAC for a period exceeding the Firm Term of the Lease, should the Government terminate the Lease after the Firm Term or does not otherwise renew or extend the term beyond the Firm Term, the Government shall not be liable for any costs, including unamortized costs beyond the Firm Term.

B. Free Rent Offered: Months 1, 2, 3, and 4 of the initial Lease term; therefore the rent for the first four months of the Lease will be (b) (4) which accounts for the sum of the Tenant Improvements and the Building Specific Amortized Capital portion of the monthly rent.

C. Rent is subject to adjustment based upon a mutual on-site measurement of the Space upon acceptance, not to exceed 46,534 ABOASF based upon the methodology outlined under the "Payment" clause of GSA Form 3517.

D. Rent is subject to adjustment based upon the final Tenant Improvement (TI) cost to be amortized in the rental rate, as agreed upon by the parties subsequent to the Lease Award Date.

E. Rent is subject to adjustment based on the final Building Specific Amortized Capital (BSAC) cost to be amortized in the rental rate, as agreed upon by the parties subsequent to the Lease Award Date.

F. If the Government occupies the Premises for less than a full calendar month, then rent shall be prorated based on the actual number of days of occupancy for that month.

G. Rent shall be paid to Lessor by electronic funds transfer in accordance with the provisions of the General Clauses. Rent shall be payable to the Payee designated in the Lessor's Central Contractor Registration (CCR), now the System for Award Management (SAM). If the payee is different from the Lessor, both payee and Lessor must be registered in SAM.

H. Lessor shall provide to the Government, in exchange for the payment of rental and other specified consideration, the following:

1. The Leasehold interest in the Property described in the Paragraph entitled "The Premises."
 2. All costs, expenses and fees to perform the work required for acceptance of the Premises in accordance with this Lease, including all costs for labor, materials, and equipment, professional fees, contractor fees, attorney fees, permit fees, inspection fees, and similar such fees, and all related expenses.
 3. Performance or satisfaction of all other obligations set forth in this Lease; and all services, utilities, and maintenance required for the proper operation of the Property, the Building, and the Premises in accordance with the terms of the Lease, including, but not limited to, all inspections, modifications, repairs, replacements, and improvements required to be made thereto to meet the requirements of this Lease.
- I. The costs made a part of this Lease for parking and ammo storage spaces are as follows:

1. **Augspurger Ramp: 79** total secured and fenced structured spaces. 72 of these spaces have already been accounted for in the rent, but will incur an additional security cost of (b) (4) per space which will amount to an additional (b) (4) of rent per annum. The additional seven (7) spaces at a cost of (b) (4) per space, or (b) (4) per annum. The total additional rent incurred for the 79 parking spaces at the Augspurger Ramp is (b) (4) per annum.
2. **250 Delaware Avenue**, comprised of the following components:
 - a. **42** total secured and fenced structured spaces. 45 spaces were previously accounted for in the Lease at this location however the Agency is giving 3 spaces back therefore the rent will be credited for (b) (4) per space for a total (b) (4) per annum. The 42 spaces already accounted for in the rent will incur an additional security cost of \$(b) (4) per space which will amount to an additional (b) (4) of rent per annum. The adjusted total additional rent for the 42 spaces is \$(b) (4) per annum, but the cost may be adjusted in the event all 42 spaces cannot be fenced.
 - b. **4 additional secured and fenced parking spaces and (b) (7)(F)** will be located in the lower level of the garage and the additional rent incurred for the 6 spaces will be \$(b) (4) per annum.

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4. The Broker Commission and Commission Credit, as defined in Lease Paragraph 1.04, is modified and replaced as follows:

1.04 BROKER COMMISSION AND COMMISSION CREDIT (JUN 2012)

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(b) (4)

1.06 RENEWAL RIGHTS (SEP 2013)

This Lease may be renewed at the option of the Government for one term of **5 YEARS** at the following rental rate(s):

OPTION TERM, YEARS 11-15	
ANNUAL RENT	ANNUAL RATE / RSF

(b) (4)

6. The Tenant Improvement Allowance, as defined in Lease Paragraph 1.08, is modified and replaced as follows:

1.08 TENANT IMPROVEMENT ALLOWANCE (AUG 2011)

The Tenant Improvement Allowance (TIA) for purposes of this Lease is **(b) (4)** per ABOA SF. The TIA is the amount that the Lessor shall make available for the Government to be used for TIs. This amount is amortized in the rent over the **ten year term** of the Lease

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at an annual interest rate of (b) (4) percent. The total TIA available to the Government, and calculated on the revised ABOASF, is (b) (4). If the Government elects to terminate the Lease any time after the firm term, the Government is not obligated to pay the remaining balance of the Tenant Improvement Allowance.

7. The Building Specific Amortized Capital, as defined in Lease Paragraph 1.11, is modified and replaced as follows:

1.11 BUILDING SPECIFIC AMORTIZED CAPITAL (SEP 2012)

For purposes of this Lease, the Building Specific Amortized Capital (BSAC) is (b) (4) per ABOASF. The Lessor will make the total BSAC amount available to the Government, which will be used to fund security related improvements. This amount shall be amortized in the rent over the 10 year term of this Lease at an annual interest rate of (b) (4) percent. **The total BSAC available to the Government and calculated on the revised ABOASF of (b) (4)**. If the Government elects to terminate the lease any time after the firm term, the Government is not obligated to pay the remaining balance of the BSAC Allowance.

**Reference Paragraph 1.12, Building Specific Amortized Capital Rental Adjustment, of the L201C for language on the Government's rights to adjust the BSAC allowance.*

8. Pursuant to Lease Section 4.03 Tenant Improvements Price Proposal (SEPT 2013), the Government has reviewed the tenant improvement costs totaling (b) (4) and has determined that they are fair and reasonable. In separate correspondence dated May 20, 2016, the Government issued a Notice to Proceed (NTP) with construction of the Tenant Improvements in the amount of (b) (4) which represents the **Tenant Improvement Allowance** available for construction costs before the additional 2,690 ABOASF was recognized as part of the Lease Premises (the *Tenant Improvement Allowance has increased to (b) (4) per Paragraph 6 of this Lease Amendment*).

Upon completion, inspection and acceptance of the space, the Government shall reimburse the Lessor for the tenant improvements as follows: The Lessor and the Government hereby agree that, based upon the Final Construction Plans, the cost of the tenant improvements is (b) (4). Of this amount, the total tenant improvement amount to be amortized into the rent is (b) (4). The remaining balance of (b) (4) shall be paid to the Lessor in a one-time, lump-sum payment upon the Lessor's submission of a proper invoice to the Government.

The Lessor must submit a properly executed invoice at: <http://www.finance.gsa.gov>.

A copy of the invoice must be provided to the Contracting Officer at the following address:

General Services Administration

(b) (6)

130 South Elmwood, Suite 420
Buffalo, NY 14201-2310

A proper invoice must include the following:

- Invoice date
- Name of the Lessor as shown on the Lease
- Lease contract number, building address, and a description, price, and quantity of the items delivered
- GSA PDN#: PS0035023

If the invoice is not submitted on company letterhead, the person(s) with whom the Lease contract is made must sign it.

9. The Percentage of Occupancy, as defined in Lease Paragraph 1.13, is modified and replaced as follows:

1.13 PERCENTAGE OF OCCUPANCY FOR TAX ADJUSTMENT (JUN 2012)

As of the Lease Award Date, the Government's Percentage of Occupancy, as defined in the "Real Estate Tax Adjustment" paragraph of this Lease is **28.70** percent. The Percentage of Occupancy is derived by dividing the total Government Space of **53,314** RSF by the total Building space of **185,782** RSF.

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10. The Operating Cost Base, as defined in Lease Paragraph 1.15, is modified and replaced as follows:

1.15 OPERATING COST BASE (SEP 2013)

The parties agree, for the purpose of applying the paragraph titled "Operating Costs Adjustment," that the Lessor's base rate for operating costs shall be (b) per RSF (b) (4). There will be no renegotiation of the operating cost rate, other than normal operating cost escalations, during the term of this Lease.

11. The construction drawings dated 10/29/2015, which were accepted by the Government and formed the basis of the proposal, are hereby incorporated by reference into this Lease. However it is noted that the additional space on the 1st floor and the secure room details will require revisions to the design.
12. Any change orders after the start of construction must be submitted in writing to the Contracting Officer for review and approval. The lessor cannot proceed with the changes unless agreed to in writing by the Contracting Officer. The consolidation of costs will be completed upon substantial completion of the space by the Lessor and acceptance by the Government, and the parties shall execute a subsequent Lease Amendment setting forth the firm term of the Lease, the amortization of the tenant improvement allowance and the annual rental rate.
13. The Lessor hereby waives future restoration rights as a result of these improvements.
14. Except as modified in this Agreement, all terms and conditions of the Lease shall remain in full force and effect and in the event that any of the terms and conditions of this Lease Amendment conflict with any terms and conditions of the Lease, the terms and conditions of this Lease Amendment shall control and govern.

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